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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 9th January 2023

S.R.O. No. 27/2023—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st December 2022 passed in the I.D. Case No. 58 of 2021 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Managements of M/s Air Retail Holding Pvt. Ltd. (Vishal Mega Mart), Plot No. 184, Platinum Tower, 5th Floor, Udyog Vihar, Industrial Area, Gurgaon-122016 (Near Rolta Tower), M/s Air Plaza Retail Holding Pvt. (Vishal Mega Mart) Shop No. 7, Market Building, Unit-2, Bhubaneswar and Shri Sashibhusan Pallai, C/o President, Vishal Megamart Karmachari Sangha, Plot No. 5/159, Shrama Kalyan Bhawan, IRC Village, Nayapalli, Bhubaneswar, Odisha was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 58 OF 2021

Dated the 21st December 2022

Present :

Shri Hiranmaya Bisoi, LL.M.,
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Managements of . . First Party—Management

1. M/s Air Retail Holdingf Pvt. Ltd. (Vishal Mega Mart), Plot No. 184, Platinum Tower, 5th Floor, Udyog Vihar, Industrial Area, Gurgaon-122016 (Near Rolta Tower).
2. M/s Air Plaza Retail Holding Pvt. (Vishal Mega Mart), Shop No. 7, Market Building, Unit-2, Bhubaneswar.

And

Shri Sashibhusan Pallai, . . Second Party—Workman
C/o President, Vishal Megamart Karmachari Sangha,
Plot No. 5/159, Shrama Kalyan Bhawan, IRC Village,
Nayapalli, Bhubaneswar, Odisha.

Appearances :

None	. .	For the First Party—Managements
The Second Party himself	. .	For the Second Party—Workman
Date of Argument	. .	13-12-2022
Date of Award	. .	21-12-2022

AWARD

The Labour & E.S.I. Department of Government of Odisha on being satisfied that a dispute exists between the above named parties have referred the following schedule for adjudication by this Tribunal vide its Order No. 8821—LESI-IR-ID-0022/2021—LESI., dated the 6th November 2021 :

> "Whether the action of the Management of M/s Air Retail Holding Pvt. Ltd. (Vishal Mega Mart), Plot No. 184, Platinum Tower, 5th Floor, Udyog Vihar, Industrial Area, Gurgaon-122016 (Near Rolta Tower) as well as Air Plaza Retail Holding Pvt. (Vishal Mega Mart) Shop No. 7, Market Building, Unit-2, Bhubaneswar in terminating the services of Shri Sashibhusan Pallai with effect from the 3rd January 2020 is legal and/or justified ? If not, what relief he is entitled to ?"

3.The case of the second party as narrated in the claim statement is that he was engaged under the first party No.2 to work in its Store with effect from the 1st November 2008 and later on was confirmed as a Store Associate on the 1st January 2013. It is stated that during his continuance under the management he was covered under the E.S.I. and E.P.F. Scheme and was allotted with E.S.I. Card bearing No.4402082155 and E.P.F. Number OR/BBS/6230/445. It is specifically averred in the claim statement that while continuing as such under the first party suddenly on the 19th December 2019 he stated to be fallen ill and upon reporting to the Manager he proceeded for Medical treatment and as per the advice of the Doctor he remained under treatment till the 28th December 2019. On recovery from illness he performed duty in the Store but on the 3rd January 2020 the Branch Manager of the Store refused him employment in an illegal and arbitrary manner, which amounts to termination of his service. It has specifically been pleaded by the second party that he having been rendered continuous and uninterrupted service for more than eleven years, the first party ought not have terminated his service by way of refusal of employment without complying with the provisions of Section 25-F of the Act and for non-compliance thereof he is entitled to reinstatement in service with full back wages and consequential service benefits.

4. The first party management did not turn-up nor filed its written statement. The service of notice on the first patty managements being held sufficient, it was set *ex parte* on the 26th September 2022 and the second party workman was called upon to adduce evidence.

5. In order to prove its claim, the second party workman examined himself as WW.1 and proved certain documents which are marked as Ext. 1 to Ext.11.

6. Heard the second party workman, his pleading and the assertions based thereon in the backdrop of the evidence available on record. On bare analysis of materials on record, the adjudication came in the guise of illegal termination by way of refusal of employment or the second party workman with effect from the 3rd January 2020. It is seen from the case record that there is no pleading and document to establish 1st party management's view point against the claim, nonetheless, the non-availability or rival pleading does not lessen the burden of the second party workman relating proof of the claim and requires primary consideration of the issues under the schedule of reference.

7. In order to substantiate the claim, WW.1 deposed that he initially joined under 1st party management as a Store Keeper on the 1st November 2008 and continued till the 2nd January 2020. He further testified that he was continuously working under the 1st party management since his joining till his termination and was getting monthly' salary, Rs.7,550. In support of the above material facts, the second party workman filed photo copy of his Offer-*cum*-Appointment Letter, Ext.1; photo copy of his letter of confirmation as Store Associate, Ext.2; photo copy of the Addendum to the offer-*cum*-appointment letter, Ext. 3 . On careful scrutiny of Ext.1 and 2 it can safely be held that the second party on being appointed by the first party No.1 was posted under first party No.2 and later on confirmed in service as a Store Associate. Ext.3 discloses that the second party was under the employment of the first party with effect from 1st November 2008. So, basing on the documentary evidence itself it can be held that there exists employer-employee relationship between the first party and the second party. Moreover, on bare reading of evidence of W. W.No.1, there is no dispute over the fact that the first party is an 'industry' and the second party was a 'workman' under the first party management.

7-1. Now the question arises as to whether he was illegally terminated from service from the 3rd January 2020. According to WW.1, his termination from service not as and by way of punishment but an illegal refusal from service which according to law called a retrenchment within the meaning of Section 2 (oo) of the Act. Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever in Section 2 (oo) of the Act would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

7-2. The testimony of WW.1 clearly disclosed that there was no exceptional circumstance under which he was terminated from service. It is specifically pleaded by the second party that on the 19th December 2019 he suddenly fell sick for which he reported the matter to the Manager of the Branch and remained under medical treatment till the 28th December 2019 and on recovery though he performed duty as usual, yet the Branch Manager of first party No.2 refused him employment with effect from 3rd January 2020. Admittedly, there is no evidence on record to show that the 1st party had ever issued a charge-sheet, conducted any inquiry against the second party;

nor did it give any written notice or notice pay and compensation to him as per the provision of 25-F of the Act. During trial, WW.1 found to have retreated the above fact in his evidence. If the assertion made in the statement claim and evidence adduced by WW.1 are accepted as true for some moment being unchallenged, it is the mandatory requirement of law that one month notice in writing indicating the reason for retrenchment of the workman or in lieu thereof wages for the period of the notice has to be given to the terminated employee. If the workman is being retrenched without following the provision as contained in the Section 25-F of the Act, it will be illegal.

7-3. In order to get remedy under 25-F of the Act, the terminated employee shall have to prove that he was in continuous duty for 240 days preceding to the date of termination. In the context, a reference may be made to the Judgment of the Hon'ble Apex Court in the case of R.M. Yellatti *vrs.* The Asst. Executive Engineer [JT 2005 (9) SC 340], wherein it has been held as follows :

> "Analyzing the above decisions of' this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore-stated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary.

xx xx xx xx

In order to prove the aforesaid aspect, the second party has brought in evidence his E.P.F. statement for the period from April, 2011 to January, 2020 which has been marked as Ext.11. A cursory look to the above document would clearly indicate that the second party has discharged continuous and uninterrupted service under the first party for more than 240 days preceding the date of his termination and thereby contributed his subscription towards the E.P.F. Ext.11 further discloses that during the period the first party had also deposited employer's share towards E.P.F. as against the employee. The fact of continuous employment of the second party for a period of more than 240 days preceding the date of termination having not been shaken in any manner, the refusal of employment to the second party on the 3rd January 2020 squarely comes within the industrial dispute of non-employment and purview of retrenchment and for non-compliance of Section 25-F of the Act, the same is illegal as well as unjustified.

8. Now coming to the question of relief to which the second party is entitled, it is found from the pleadings as well.as evidence of the second party that he has discharged duty to the satisfaction of the organization of the first party managements for a period of more than ten years and as reflected in Ext.2 due to his satisfactory performance he has got a letter of confirmation in the post of Store Associate (Band S 1.1 in the role of a Store Associate). So, this Tribunal is of the view that this is a fit case where the relief of reinstatement and back wages should be awarded in favour of the second party for his illegal retrenchment from service (Jeetubha Khansangji Jadeja *Vrs.* Kutchh

District Panchayat, reported in 2022 Latest Caselaw 755 SC). Accordingly, while holding the action as illegal and unjustified, the first party managements are directed to reinstate the second party in his job forthwith. As there is positive evidence on record that after termination of his service the second party is not gainfully employed elsewhere, the first party managements are directed to pay him 50% of his back wages from the date of retrenchment till the date of the Award. The awarded back wages be paid to the second party within a period of two months of the date of publication of the 'Award' in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

HIRANMAYA BISOI
21-12-2022
Presiding Officer
Industrial Tribunal, Bhubaneswar

HIRANMAYA BISOI
21-12-2022
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 318—LESI-IR-ID-0316/2022-LESI.]
By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government

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